

*Original - Ac in Error -
Transcript*

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1924

No. 207

**THE CHAS. WOLFF PACKING COMPANY, PLAINTIFF IN
ERROR,**

vs.

**THE COURT OF INDUSTRIAL RELATIONS OF THE STATE
OF KANSAS**

IN ERROR TO THE SUPREME COURT OF THE STATE OF KANSAS

FILED OCTOBER 20, 1924

(20,982)

(29,932)

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[fol. 1]

IN SUPREME COURT OF KANSAS

No. 23702

COURT OF INDUSTRIAL RELATIONS OF THE STATE OF KANSAS,
Plaintiff,

vs.

THE CHAS. WOLFF PACKING COMPANY, Defendant

ORDER OF SUPREME COURT OF UNITED STATES REMANDING CAUSE
TO SUPREME COURT OF KANSAS—Filed June 23, 1923

Be it remembered that on the 23rd day of June, 1923, there was filed in the office of the Clerk of the Supreme Court of the State of Kansas, a Mandate, from the Supreme Court of the United States, which Mandate is in the words and figures, to wit:

[fol. 2] UNITED STATES OF AMERICA, ss:

[SEAL.]

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Kansas, Greeting:

Whereas, lately in the Supreme Court of the State of Kansas, before you, or some of you, in a cause between Court of Industrial Relations of the State of Kansas, plaintiff, and the Chas. Wolff Packing Company, defendant, wherein the judgment of the said Supreme Court, entered in said cause on the 10th day of June, A. D. 1922, is in the following words, viz:

"This cause comes on for decision, and thereupon it is ordered and adjudged that the writ of mandamus prayed for be allowed, and that judgment herein be entered in favor of the plaintiff and against the defendant. It is further ordered that the clerk of this court issue a peremptory writ to the defendant commanding said defendant to put into effect those parts of the order of the Court of Industrial Relations numbered 2, 3, 4, 9, 11, 14, 15, 17, 18, and 19.

It is further ordered that the defendant pay the costs of this case in this court taxed at \$— and hereof let execution issue."

as by the inspection of the transcript of the record of the said Supreme Court which was brought into the Supreme Court of the United States by virtue of a writ of error agreeably to the act of Congress, in such case made and provided, fully and at large appears.
[fol. 3] And whereas, in the present term of October, in the year of our Lord one thousand nine hundred and twenty-two the said cause came on to be heard before the Supreme Court of the United States on the said transcript of record, and was argued by counsel.

On consideration whereof, It is now here ordered and adjudged

by this Court that the judgment of the said Supreme Court in this cause be, and the same is hereby, reversed with costs; and that the said defendant, the Chas. Wolff Packing Company, recover against the said plaintiff Seven hundred and eighty-three dollars and five cents for its costs herein expended and have execution therefor.

And it is further ordered that this cause be, and the same is hereby, remanded to the said Supreme Court for further proceedings not inconsistent with the opinion of this Court.

June 11, 1923.

And the same is hereby remanded to you, the said Judges of the said Supreme Court of the State of Kansas, in order that such execution and further proceedings may be had in the said cause, in conformity with the judgment and decree of this Court above stated, as, according to right and justice, and the Constitution and laws of the United States, ought to be had therein, the said writ of error notwithstanding.

Witness the Honorable William H. Taft, Chief Justice of the United States, the 21st day of June, in the year of our Lord one thousand nine hundred and twenty-three.

Wm. R. Stansbury, Clerk of the Supreme Court of the United States.

Costs of defendant:

Clerk	\$232.55
Printing record.....	530.50
Attorney	20.00
	<hr/>
	\$783.05

[fol. 4] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM,
1922

Costs of Chas. Wolff Packing Co., Plff. in Error, in No. 739

1922, October Term—Docketing cause and filing record, \$5.00; appearance, .25; filing praecipes and receipts, 1.25; filing papers, 4.25; filing motion, .25; submission .20; order, .20; filing .25; recording, .40; filing orders 1.00; filing stip'n .25; filing briefs, \$5.00; argument, .20; judgment, \$1.00; filing same, .25; recording, .40; mandate, \$5.00; preparing record for printer, etc., \$207.00; cost of printing record, \$530.50; attorney's docket fee, \$20.00; costs and copy .40.....	\$783.05
	<hr/>
	783.05

Fee book, page 29, 289.

Test:

Wm. R. Stansbury, Clerk of the Supreme Court of the United States.

[fols. 4½ & 5] [File endorsement omitted.]

[fol. 6]

Copy

IN SUPREME COURT OF KANSAS

[Title omitted]

MOTION TO SPREAD MANDATE AND MODIFY JUDGMENT—Filed June 25, 1923

Comes now the plaintiff in the above entitled cause, and shows to this honorable court that on June 10, 1922, this court entered herein its judgment directing the Clerk of the Court to issue a peremptory writ of mandamus directed to the defendant commanding said defendant to put into effect those parts of the Order of the Court of Industrial Relations, numbered 2, 3, 4, 9, 11, 14, 15, 17, 18 and 19. Thereafter and within the time provided by law the defendant sued out a writ of error from the Supreme Court of the United States to this Court to review said judgment, and that thereafter on June 11th, 1923, the Supreme Court of the United States rendered its opinion, in which it decided as follows:

“We think the Industrial Court Act, insofar as it permits the fixing of wages in plaintiff in error's packing house, is in conflict with the Fourteenth Amendment and deprives it of its property and liberty of contract without due process of law.”

and directed that the case be reversed and remanded to this court for further proceedings not inconsistent with said opinion. That the mandate in said cause has now been received by the Clerk of this court from the Supreme Court of the United States.

Therefore plaintiff moves this court to spread the said mandate of record and modify the judgment of this court entered on June 10, 1922, by providing as follows:

It is ordered that so much of said judgment of June 10, 1922, [fol. 7] which provided that the Clerk of this court issue a writ of mandamus commanding the defendant to put into effect these parts of the order of the Court of Industrial Relations numbered 2, 4, 11, 17 and 18, which relate to the fixing of wages, be stricken out.

It is further ordered that the Clerk of this court issue a peremptory writ of mandamus directed to the defendant commanding said defendant to put into effect those parts of the Order of the Court of Industrial Relations as follows:

"(3) A basic working day of eight hours shall be observed in this industry; but a nine hour day may be observed not to exceed two days in any one week without penalty; providing, however, that if the working hours of the week shall exceed forty-eight in number, all over forty-eight shall be paid for at the rate of time and one-half; furthermore, in case a day in excess of the eight hour day shall be observed more than two days in one week, all over eight hours, except for said two days in said week, shall be paid for at the rate of time and one-half, even though the working hours of the week may be forty-eight hours or fewer.

"(9) Women workers shall receive the same wages as men engaged in the same class and kind of work.

"(14) Workers paid by the week or day, if employed within the plant and not within the office or sales department, shall be subject to hours of work and overtime as others employed under the terms of Finding No. Three hereof.

"(15) The temporary order heretofore made in this case shall stand and be complied with by the respondent company, beginning on the date of said temporary order and continuing until May 1st, 1921, the date of this order."

Said temporary Order being as follows:

"That pending the final determination of this controversy, the employees of respondent, who handle the product from the time the animals are driven into the shackling pens until the time the product is placed in storage ready to be shipped out upon orders from the customers, be placed upon the eight-hour day, but that time and ~~one-fourth~~ shall be paid for the ninth hour, and time and one-half thereafter."

"(19) In departments operating twenty-four hours a day and seven days a week, each employee therein shall be entitled to one day off each week. In other departments, work performed on Sundays and legal holidays shall be paid for at the rate of time and one-half.

[fols. 8 & 9] "This order shall take effect and be in force on the first day of May, 1921, and shall continue until changed by the Court or changed by agreement of the parties with the approval of the Court."

Charles B. Griffith, Attorney General. John G. Egan, Assistant Attorney General. Randal C. Harvey, Attorney for the Court of Industrial Relations. Chester I. Long, Austin M. Cowan, of Counsel.

[File endorsement omitted.]

[fol. 10]

IN THE SUPREME COURT OF KANSAS

[Title omitted]

RESPONDENT'S MOTION TO SPREAD MANDATE OF THE SUPREME COURT
OF THE UNITED STATES UPON THE RECORD AND ENTER JUDGMENT
PURSUANT THERETO—Filed July 5, 1923

And now comes the Chas. Wolff Packing Company, the above named respondent, and shows to the court that the mandate of the Supreme Court of the United States, in an action heretofore pending in that Court, wherein this respondent was plaintiff in error and the above named petitioner was defendant in error involving the validity of the judgment entered in this court in this cause, has been received by the Clerk of this court, and should be spread upon the records of this court in this cause; and, thereupon, the respondent moves this court to enter an order that said mandate be spread upon the records and that the order heretofore made by this court be reversed and judgment entered herein, and deny the application and petition of the petitioner for a writ of mandamus as prayed for by said petitioner.

As grounds for its motion, the respondent says:

[fol. 11] (1) That heretofore on June 10, 1922, this court entered a judgment allowing a peremptory writ of mandamus to issue directed to the respondent and commanding the respondent to put into effect certain paragraphs of an order made and entered by the petitioner as of May 2, 1921; that afterward, and in due time, the respondent prosecuted its writ of error in the Supreme Court of the United States, and on June 11, 1923, the Supreme Court of the United States entered its judgment upon said writ of error reversing the judgment of this court directing the issue of said peremptory writ of mandamus, with directions for further proceedings in this court not inconsistent with said opinion.

(2) That it would be inconsistent with said opinion for this court to enter any order or judgment sustaining the power of the Court of Industrial Relations to make any order fixing the terms and conditions of employment of employees engaged in the operation of the defendant's property.

(3) That it would be inconsistent with the opinion rendered by the Supreme Court of the United States in granting said writ of error and reversing the judgment of this court to sustain any order made by the petitioner directly or indirectly interfering with the freedom of contract and of labor secured to the respondent and its employees by the Fourteenth Amendment to the Constitution of the United States.

(4) That it would be inconsistent with said opinion for this court to enter any order or judgment sustaining any order of the Court of Industrial Relations fixing hours of labor or service to be observed by the petitioner in entering into contracts with its em-

ployees, and thereby regulating such contracts and depriving the petitioner and its employees of the liberty and freedom of contract secured to them by said Fourteenth Amendment.

(5) That it would be inconsistent with said opinion for this court to enter any order or judgment sustaining any order of the petitioner exercising any jurisdiction whatever over the management or control of the respondent's business, property or affairs, upon the ground that it was "Affected with a public interest and subject to supervision by the State" as provided in Sec. 3 of the Act creating the Court of Industrial Relations (Ch. 29, Special Session Laws of 1920) "for the purpose of preserving the public peace, protecting the public health, preventing industrial strife, disorder and waste, and securing regular and orderly conduct" of the business conducted by the petitioner, which includes "the preparation of food products whereby * * * substances are being converted * * * from their natural state to a condition to be used [fol. 12] as food for human beings. For that, by its opinion and judgment the Supreme Court of the United States determined that the business conducted by the respondent was not so affected with a public interest as to justify the exercise of any power or jurisdiction over it by said petitioner in the matter of controversies between the respondent and its employees, or, to bring the respondent and its employees before it, and after hearing and investigation fix the terms and conditions of employment between them. On the contrary in said opinion and judgment it was held and determined that no authority of the Supreme Court of the United States sustained such an exercise of power by the petitioner in respect of the business, property and affairs conducted, owned and managed by the respondent.

(6) That it would be inconsistent with the judgment and decision of the Supreme Court of the United States, entered as aforesaid, for this court to sustain any order of the Court of Industrial Relations depriving the respondent or its employees of their liberty or property without due process of law; and, that any order or judgment of this court sustaining in whole or in part the order entered as of May 2, 1921, by the petitioner herein, and made the subject of its petition to this court, would deprive the respondent and its employees of their liberty and property without due process of law, in violation of said opinion, judgment and mandate of the Supreme Court of the United States.

Wherefore the respondent respectfully prays that this court enter a judgment herein reversing the judgment heretofore entered in this cause, and deny the petitioner herein any relief whatsoever in respect of or concerning any of the matters and things set out in its petition, and that this court either determine for itself, or through a Commissioner to be appointed, the expense, loss and damage sustained by the respondent in the prosecution of its writ of error to the Supreme Court of the United States, in resistance of an order entered by the petitioner in violation of the Constitution of the United States

and of the rights of the respondent and of its employees; and that upon the coming in of the report of such Commissioner fixing the [fols. 13 & 14] amount of such expense, loss and damages, that this court enter judgment against the petitioner herein for the amount so found due to the respondent in respect of such expense, loss and damage.

D. R. Hite, Attorney for Respondent.

Service acknowledged June 30, 1923.

John G. Egan, Atty. for Petitioner.

[File endorsement omitted.]

[fols. 15 & 16] IN SUPREME COURT OF KANSAS

[Title omitted]

SUBMISSION OF MOTIONS TO SPREAD MANDATE AND ENTER JUDGMENT—Filed July 5, 1923

Now comes the plaintiff by its written motion and moves the court for an order to Spread the Mandate of the Supreme Court of the United States, upon the journal of this court and to Modify the Judgment of this court entered on June 10th 1922, and also comes the defendant herein by its written motion and moves the court for an Order to spread the Mandate of the Supreme Court of the United States, upon the journal of this court and to enter judgment pursuant thereto; and thereupon after oral argument by Chester I. Long and John G. Egan, for the Plaintiff and by D. R. Hite for the defendant, said motions were submitted and taken under advisement by the court.

[fols. 17 & 18] IN SUPREME COURT OF KANSAS

[Title omitted]

ORDER ALLOWING MOTION OF PLAINTIFF AND OVERRULING MOTION OF DEFENDANT—Filed July 5, 1923

Now comes on for decision the motions of both parties for an order to Spread the Mandate of the Supreme Court of the United States upon the Journals of this court; and thereupon after due consideration by the court is ordered that the motion of the plaintiff be allowed in so far as its order does not conflict with the decision of the Supreme Court of the United States; that the Mandate of the Supreme Court of the United States be spread upon the journals of this court; that the Judgment of this court be modified by striking out all orders concerning wages as indicated in the opinion of this court filed

herein. It is further ordered that a peremptory writ of mandamus issue commanding the defendant to put into effect the following parts of the order of the Court of industrial relations:

"3. A Basic working day of eight hours shall be observed in this industry; but a nine hour day may be observed not to exceed two days in any one week without penalty.

"14. Workers paid by the week or day, if employed within the plant and not within the office or sales department, shall be subject to hours of work — as others employed.

"19. In departments operating twenty-four hours a day and seven days a week, each employee therein shall be entitled to one day off each week.

"This order shall continue in force until changed by the court (the court of industrial relations) or changed by agreement of the parties with the approval of the court (the court of industrial relations)."

It is further ordered that the motion of the defendant be denied.

It is further ordered that the costs of this proceeding be divided equally between the parties plaintiff and defendant, taxed at \$— and hereof let execution issue.

[fol. 18a]

IN SUPREME COURT OF KANSAS

[Title omitted]

OPINION—Filed Oct. 6, 1923

Syllabus by the Court

Marshall, J.

The mandate of the Supreme Court of the United States is ordered spread of record. In obedience to that mandate, the orders of the court of industrial relations fixing or relating to the wages that shall be paid by the Charles Wolff Packing Company are stricken out of the judgment of this court. A peremptory writ of mandamus is directed to be issued commanding the Charles Wolff Packing Company to put into effect those parts of the order of the court of industrial relations not affected by the judgment of the United States Supreme Court.

Johnston, C. J., Mason, J., Marshall, J., Dawson, J., and Hopkins, J., concurring.

Burch, J., adheres to the views expressed by him in *Court of Industrial Relations v. Packing Co.*, 111 Kan. 501, 519, 207 Pac. 806.

Harvey, J., is of the opinion that a proper consideration of the

opinion and mandate of the supreme court of the United States requires a reversal of the former judgment of this court in its entirety.

A true copy. Attest: — — —, Clerk Supreme Court.

[fol. 18b] The opinion of the court was delivered by MARSHALL, J.:

Two opinions have been filed in this action, one on October 8, 1921 (Court of Industrial Relations v. Packing Co., 109 Kan. 629, 201 Pac. 418), and one on June 10, 1922 (Court of Industrial Relations v. Packing Co., 111 Kan. 501, 207 Pac. 806). Error therefrom was taken to the supreme court of the United States. The case has been decided by that court, and the mandate and opinion thereof have been received. The plaintiff moves that the mandate be spread of record; that those parts of the order of the court of industrial relations numbered 2, 4, 11, 17, and 18 which relate to the fixing of wages be stricken out; and that a peremptory writ of mandamus issue commanding the defendant to put into effect the remainder of those ordered and put into effect the following parts of the order of the court of industrial relations:

“(3) A basic working day of eight hours shall be observed in this industry; but a nine hour day may be observed not to exceed two days in any one week without penalty; providing, however, that if the working hours of the week shall exceed forty-eight in number, all over forty-eight shall be paid for at the rate of time and one-half; furthermore, in case a day in excess of the eight hour day shall be observed more than two days in one week, all over eight hours, except for said two days in said week, shall be paid for at the rate of time and one-half, even though the working hours of the week may be forty-eight hours or fewer.

“(9) Women workers shall receive the same wages as men engaged in the same class and kind of work.

“(14) Workers paid by the week or day, if employed within the plant and not within the office or sales department, shall be subject to hours of work and overtime as others employed under the terms of finding No. Three hereof.

[fol. 19] “(15) The temporary order heretofore made in this case shall stand and be complied with by the respondent company, beginning on the date of said temporary order and continuing until May 1st, 1921, the date of this order.

“Said temporary order being as follows:

“That pending the final determination of this controversy, the employees of respondent, who handle the product from the time the animals are driven into the shackling pens until the time that the product is placed in storage ready to be shipped out upon orders from the customers, be placed upon the eight-hour day, but that time and one-fourth shall be paid for the ninth hour, and time and one-half thereafter.

"(19) In departments operating twenty-four hours a day and seven days a week, each employee therein shall be entitled to one day off each week. In other departments, work performed on Sundays and legal holidays shall be paid for at the rate of time and one-half.

"This order shall take effect and be in force on the first day of May, 1921, and shall continue until changed by the Court or changed by agreement of the parties with the approval of the Court."

The defendant moves that the judgment of this court be reversed; that the application for a writ of mandamus be denied; and that the court determine either for itself or through a commissioner, the expense, loss, and damage sustained by the defendant in resisting the order made by the court of industrial relations and in prosecuting its writ of error to the supreme court of the United States; and that upon such expense, loss, and damage being ascertained, judgment be rendered against the plaintiff therefor.

The differences between the plaintiff and the defendant arise out of the interpretation of the opinion of the supreme court of the United States. That opinion discusses wages and strikes. The court says:

"We are considering the validity of the act as compelling the employer to pay the adjudged wages, and as forbidding the employees to combine against working and receiving them."

The concluding paragraphs of that opinion are as follows:

[fol. 20] "We think the Industrial Court Act in so far as it permits the fixing of wages in plaintiff in error's packing house is in conflict with the Fourteenth Amendment and deprives it of its property and liberty of contract without due process of law.

"The judgment of the court below must be reversed."

The mandate of the supreme court is—

"That this case be, and the same is hereby, remanded to the supreme court for further proceedings not inconsistent with the opinion of this court."

The supreme court of the United States has not said that the court of industrial relations act is invalid except in so far as it attempts to give power to fix wages. Other matters were embraced within the opinion and judgment of this court, but they do not appear to have been determined by the supreme court. Strikes are discussed, but there is nothing in the judgment of the court concerning them. The judgment concerns wages only.

The motion of the plaintiff is allowed in so far as its order does not conflict with the decision of the supreme court of the United States. An analysis of those parts of the order that the plaintiff desires enforced is necessary.

All of that part of paragraph No. 3, except "A basic working day of eight hours shall be observed in this industry; but a nine hour day may be observed not to exceed two days in any one week without penalty," concerns wages.

Paragraph No. 9 fixes wages to be paid to women.

Paragraph No. 14 depends on paragraph No. 3, and is governed by the interpretation given paragraph No. 3.

Paragraph No. 15 expired by its own terms on May 1, 1921, and there is nothing further to do concerning it.

Out of paragraph No. 19 must be stricken the following words:

"In other departments, work performed on Sundays and legal holidays shall be paid for at the rate of time and one-half."

[fol. 21] Paragraphs No. 2, 4, 11, 17, and 18 of the order of the court of industrial relations read as follows:

"2. Employees, whether organized or unorganized shall receive wages as shown in schedules hereinafter set out.

"4. No guarantee of time per week is specifically ordered; but sufficient work shall be offered to the regular employees in each and every month so that the monthly earnings of regular workers will be sufficient to constitute a fair wage under the Kansas industrial law, as heretofore defined by this court.

"11. Piece-work rates shall be paid in accordance with piece-work schedule herein set out.

"17. The following schedule of minimum wages shall be paid by the respondent company to its respective employees, to-wit: [the details of the schedule are immaterial.]

"18. The establishing of the above minimum wage schedule shall not in any way be construed as restricting or preventing the respondent from paying a higher wage when the same is deemed advisable."

The plaintiff asks that those parts of these paragraphs which relate to the fixing of wages be stricken out and that the remainder be put into effect. These paragraphs of the order of the court of industrial relations do not deal with anything except wages and are therefore wholly invalid under the decision of the supreme court of the United States.

The mandate of the supreme court of the United States is ordered recorded. The judgment of this court is modified in obedience to the mandate by striking out all orders concerning wages as indicated in this opinion.

It is by the court ordered that a peremptory writ of mandamus issue commanding the defendant to put into effect the following parts of the order of the court of industrial relations:

[fol. 22] "3. A basic working day of eight hours shall be observed in this industry; but a nine hour day may be observed not to exceed two days in any one week without penalty.

"14. Workers paid by the week or day, if employed within the plant and not within the office or sales department, shall be subject to hours of work * * * as others employed.

"19. In departments operating twenty-four hours a day and seven days a week, each employee therein shall be entitled to one day off each week.

"This order shall * * * continue in force until changed by the Court [the court of industrial relations] or changed by agreement of the parties with the approval of the court [the court of industrial relations]."

The motion of the defendant is denied.

Johnston, C. J., Mason, J., Dawson, J., and Hopkins, J., concurring.

Burch, J., adheres to the views expressed by him in Court of Industrial Relations v. Packing Co., 111 Kan. 501, 519, 207 Pac. 806.

Harvey, J., is of the opinion that a proper consideration of the opinion and mandate of the supreme court of the United States requires a reversal of the former judgment of this court in its entirety.

A true copy. Attest: — — —, Clerk Supreme Court.

[fols. 23 & 24] IN SUPREME COURT OF KANSAS

[Title omitted]

CLERK'S CERTIFICATE

I, D. A. Valentine, Clerk of the Supreme Court of the State of Kansas, do hereby certify that the above and foregoing is a true, full and complete transcript of the record and proceedings had in the above entitled case, and also of the opinion of the court rendered thereon as the same appear on file and remain of record in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office in the City of Topeka, this 25th day of October, 1923.

D. A. Valentine, Clerk of the Supreme Court of the State of Kansas. (Seal of Supreme Court State of Kansas.)

[fol. 25]

IN SUPREME COURT OF KANSAS

[Title omitted]

PETITION FOR AND ORDER ALLOWING WRIT OF ERROR—Filed Oct. 11, 1923

Considering itself aggrieved by the final decision of the Supreme Court of the State of Kansas in its order and judgment entered in the above entitled cause in said court on October 6, 1923, the said defendant, the Chas. Wolff Packing Company, hereby prays a writ of error from said decision and judgment to the Supreme Court of the United States. The said defendant herewith presents its assignments of error upon which it will rely for a reversal of said decision, order and judgment.

D. R. Hite, Attorney for the Chas. Wolff Packing Company.

STATE OF KANSAS,
Shawnee County, ss:

Let the writ of error issue upon the execution of bond by the defendant, the Chas. Wolff Packing Company, in the sum of Twenty Thousand (\$20,000.00) Dollars, the said bond when approved to act as a supersedeas.

W. A. Johnston, Chief Justice.

[fol. 25½] [File endorsement omitted.]

[fol. 26] IN SUPREME COURT OF KANSAS

[Title omitted]

ASSIGNMENTS OF ERROR—Filed Oct. 11, 1923

The said Chas. Wolff Packing Company, with its petition for a writ of error, presents the following assignments of error in the ruling and decision of the Supreme Court of the State of Kansas made and entered on October 6, 1923:

(1) Said court erred in failing and refusing to enter an order in the above entitled cause vacating and annulling its judgment made and entered on June 10, 1922, as directed by the mandate and judgment of the United States Supreme Court dated June 11, 1923.

(2) That said Kansas Supreme Court erred in entering an order modifying instead of annulling its judgment of June 10, 1922; and, in holding and deciding that the judgment of the Supreme Court of the United States entered on June 11, 1923, did not reverse, annul, and set aside the judgment of said Kansas Supreme Court dated June 10, 1922.

(3) Said Kansas Supreme Court erred in failing and refusing to give full force and effect to the judgment and mandate of the Supreme Court of the United States entered in the above entitled cause on June 11, 1923; and in rendering said judgment of October 6, 1923; for that, the judgment of said Kansas Supreme Court so entered on October 6, 1923, is not consistent with but is opposed to the opinion and decision of the Supreme Court of the United States made and entered in this cause.

[fol. 27] (4) Said Kansas Supreme Court erred in overruling the motion made by the Chas. Wolff Packing Company to give effect to the opinion, judgment and mandate of the Supreme Court of the United States entered herein.

(5) Said Kansas Supreme Court erred in sustaining, in part, the motion and petition of the Court of industrial relations filed herein.

(6) Said Kansas Supreme Court erred in holding and deciding that the parts of the order of the court of industrial relations of May 2, 1921, set out in the opinion and judgment of the Kansas Supreme Court entered October 6, 1923, were valid; and that such parts of said order so held valid did not deprive the Chas. Wolff Packing Company and its employes of their liberty and property without due process of law, and did not deny to them the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

(7) That said Kansas Supreme Court erred in holding and deciding that the act creating the court of industrial relations, as applied to the said Chas. Wolff Packing Company, by said court of industrial relations, was valid and not opposed to the Fourteenth Amendment to the Constitution of the United States.

(8) Said Kansas Supreme Court erred in failing and refusing, upon the application of said Chas. Wolff Packing Company, to enter an order and judgment in the above entitled cause denying the petition of the plaintiff, the court of industrial relations, as a whole and overruling the application of said court of industrial relations for a writ of mandamus directing the said Chas. Wolff Packing Company to observe any part of the order of said court of industrial relations.

(9) Said Kansas Supreme Court erred in rendering a judgment in the above entitled cause requiring the said Chas. Wolff Packing Company to observe parts of paragraphs (3), (14) and (19) in the order of the court of industrial relations dated May 2, 1921; because said order in all of its parts deprived the said Chas. Wolff Packing Company and its employes of this liberty and property and denied to them the equal protection of the laws contrary to the provisions of the Fourteenth Amendment to the Constitution of the United States.

[fol. 28] The said Chas. Wolff Packing Company presents the foregoing assignments of error in the ruling and decision of the Supreme

Court of the State of Kansas dated October 6, 1923, and prays that such disposition be made thereof as may be in accordance with the laws of the United States in such cases made and provided. The said Chas. Wolff Packing Company further respectfully prays that for the errors herein assigned the said ruling and decision be reversed and that a judgment be entered by the Supreme Court of the United States that the statute creating the court of industrial relations, as applied to the defendant in said ruling and decision, deprives it of its liberty and property without due process of law and denies to it the equal protection of the laws in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States.

D. R. Hite, Attorney for the Chas. Wolff Packing Company.

[fol. 28½] [File endorsement omitted.]

[fol. 29] IN SUPREME COURT OF KANSAS

[Title omitted]

ORDER ALLOWING WRIT OF ERROR

Now comes the defendant herein by its attorney D. R. Hite, and presents to the Hon. W. A. Johnston, Chief Justice, a petition praying for a Writ of Error herein; and thereupon after due consideration it is ordered that said petition for a Writ of Error be allowed, upon the giving by the defendant of a good and sufficient bond in the sum of \$20,000.00 to be approved by the Chief Justice of this court.

[fol. 30 & 31] BOND ON WRIT OF ERROR FOR \$20,000—Approved and filed Oct. 11, 1923; omitted in printing

[fol. 32] UNITED STATES OF AMERICA:

IN SUPREME COURT OF KANSAS

WRIT OF ERROR

The President of the United States to the Supreme Court of the State of Kansas:

Because, in the records and proceedings, as also the rendition of a judgment in a plea which is in the said Supreme Court of Kansas before you, at the October 1923 sitting of the July 1923 term thereof, between the Court of Industrial Relations, plaintiff, vs. The Chas. Wolff Packing Company, defendant, a manifest error hath happened

to the great damage of said defendant, The Chas. Wolff Packing Company, as by its complaint appears.

We being willing that error, if any has been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the records and proceedings aforesaid, with all things concerning the same, to the United States Supreme Court, together with this writ, so that you have the said records and proceedings aforesaid in the City of Washington, D. C., and filed in the office of the Clerk of the United States Supreme Court, on or before thirty days from the date hereof, to the end that the record and proceedings aforesaid being inspected, the United States Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness, the Honorable William H. Taft, Chief Justice of the Supreme Court of the United States, this October 11th, 1923.

Done in the City of Topeka, with the seal of the District Court of the United States for the District of Kansas attached.

F. L. Campbell, Clerk of the United States District Court for the District of Kansas.

Allowed: W. A. Johnston, Chief Justice of the Supreme Court of the State of Kansas.

[fol. 33] CITATION—In usual form, showing service on Charles B. Griffith and John G. Egan; omitted in printing

[fol. 33½] [File endorsement omitted.]

[fol. 34] IN SUPREME COURT OF KANSAS

CERTIFICATE OF LODGMENT

I, D. A. Valentine, Clerk of the Supreme Court of the State of Kansas do hereby certify that there was lodged with me as such clerk, on October 11th 1923 in the above entitled case—

1. The Original Bond for Appeal of which a copy is herein set forth, and

2. Two copies of the Writ of Error *sa* herein set forth, one for the plaintiff and one to file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Supreme Court of the State of Kansas, in the City of Topeka, this 25th day of October, 1923.

D. A. Valentine, Clerk of the Supreme Court of the State of Kansas. (Seal Supreme Court, State of Kansas.)

[fol. 35]

IN SUPREME COURT OF KANSAS

RETURN TO WRIT OF ERROR

In obedience to the commands of this writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the complete record and proceedings in the within entitled case, together with all things concerning the same.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Supreme Court of Kansas in the city of Topeka, this 25th day of October, A. D. 1923.

D. A. Valentine, Clerk of the Supreme Court of the State of Kansas. (Seal Supreme Court, State of Kansas.)

Endorsed on cover: File No. 29,932. Kansas Supreme Court. Term No. 207. The Chas. Wolff Packing Company, plaintiff in error, vs. The Court of Industrial Relations of the State of Kansas. Filed October 29th, 1923. File No. 29,932.

(3992)